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ELMORE PATENT LAW GROUP, PC
515 GROTON ROAD
UNIT 1R
WESTFORD MA 01886

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OFFICE OF PETITIONS

In re Patent No. 7,601,709	:	DECISION ON REQUEST
Miao et al.	:	FOR
Issue Date: Oct. 13, 2009	:	RECONSIDERATION OF
Application No. 10/774,047	:	PATENT TERM ADJUSTMENT
Filed: Feb. 6, 2004	:	and
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
4056.1066 US1	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 14, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred fifty-one (1651) days. For the reasons stated below, the petition will be treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred twenty-four (1624) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred twenty-four (1624) days is **GRANTED to the extent indicated herein.**

Patentees again assert that an additional period of adjustment of 100 days for Office delay is warranted because the non-final Office action mailed on July 24, 2007, and the restriction requirement mailed on January 8, 2008, were both "incomplete", and a complete Office action was not mailed until January 22, 2008, four (4) months and 100 days after a reply was filed, on

June 14, 2007, in response to the initial restriction requirement.

Patentees' argument has again been considered, but is not persuasive. Pursuant to 37 C.F.R. § 1.702(a),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On July 24, 2007, the Office mailed a notification under 35 U.S.C. 132 in response to the reply filed on June 14, 2007. This was within four months of the date the reply was filed. Accordingly, no adjustment was entered for Office delay pursuant to 37 CFR 1.702(a)(2). A review of the record confirms that this was the proper period of adjustment for Office delay.

The subsequent mailing of a communication by the examiner altering the previous action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on July 24, 2007. The examiner does not have the authority to vacate, rescind, or withdraw an Office action. Unless vacated by the Technology Center Director, for purposes of calculating patent term adjustment, the action originally mailed by the examiner on July 24, 2007 will be used to calculate the amount of Office delay.

With regards to the "B" delay period, the over three year period begins on February 7, 2007 and ends on October 13, 2009, the date the application issued as a patent, and is 980 days. Considering the overlapping periods of 243 (69 + 174) days, the "B" delay is 737 (980 - 243) days.

The patent term adjustment will be updated to 1624 days (914 Office delay + 980 three years delay - 243 overlap - 27 applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand six hundred twenty-four (1624) days**.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,601,709 B2

DATED : Oct. 13, 2009

DRAFT

INVENTOR(S) : Miao et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 953 days.

Delete the phrase "by 953 days" and insert – by 1624 days--